



Department of Community &
Economic Development

CENTER FOR COMMUNITY SERVICES

Title: Procurement, Bidding, and Subcontracting
Procedures

Directive #: CW2016-01

Effective: July 1, 2016

To: Weatherization Assistance Program (WAP) and Community Service Block Grant (CSBG)
Subgrantees

From: Lynette Praster, Director - Center for Community Services

1.0 Purpose

To inform and provide guidance to Weatherization and CSBG subgrantees of the procurement, bidding and subcontracting procedures under the Department of Energy (DOE) Weatherization Assistance Program (WAP), Low-Income Home Energy Assistance Program (LIHEAP) and the Department of Health and Human Services (DHHS) CSBG programs.

2.0 Background

All procurement of goods and services with WAP funds will be made in accordance with:

- 10 CFR 600.140-148
- OMB Circular 2 CFR, Chapter I, Chapter II, Part 200, 215,220,225 and 230
- 10 CFR 600.236

and as directed by CCS, with the understanding that more stringent local purchasing policies may apply provided they are not inconsistent with this Directive or the applicable federal statutes, regulations, rules, and directives. The WAP federal statutes, regulations, rules, and directives are available online through the WAP Technical Assistance Center at www.waptac.org.

All procurement of goods and services with CSBG funds will be made in accordance with:

- 45 CFR Part 74
- 45 CFR Part 92
- OMB Circular 2 CFR, Chapter I, Chapter II, Part 200, 215,220,225 and 230

U.S. Department of Health and Human Services CSBG Information Memorandum No. 60, "Duties and Interests with Respect to Property Purchased, Constructed or Improved by an Eligible Entity Using Block Grant Funds Provided Under Public Law 105-285 Section 678(a)(1)&(2) Limitation on Use of Funds and the Secretary's Right to Waive the Prohibition. The CSBG federal statutes, regulations, rules and directives are available online at <http://www.acf.hhs.gov/programs/ocs/programs/csbg>.

There is a state procurement system sponsored by the Pennsylvania Department of General

Services (DGS) called COSTARS. This system can be used for the procurement of goods and services and satisfies the requirement for full and open competition.

3.0 Policy

The following rules apply to both WAP and CSBG unless otherwise noted:

Procurement

Subgrantees shall establish and maintain written procurement policies and procedures that comply with this Directive and all applicable federal, state and local laws, rules and regulations. The provisions set forth govern all computer purchases, all property and equipment such as file servers, laptops, power tools, etc. with an acquisition cost of \$1,000 or more and for purchases of unit costs of \$5,000 or more such as vehicles and tractors, purchased in whole or in part with CSBG, DOE or LIHEAP funds.

Procurement procedures are required but no prior approval is needed for equipment with a unit cost of less than \$5,000. For purchases made that are \$3,000 or less, subgrantees are required to follow micropurchase rules as set forth in 2 CFR 200.320. Micropurchase rules state that to the extent practicable, the micropurchase must be distributed equitably among qualified suppliers.

Budgeted equipment with a unit cost of \$5,000 or more requires separate approval and the procedure is outlined in the Property/Inventory Directive.

For the WAP vehicles, equipment and/or material purchases, the agency should check the weatherization extranet at <https://collab.pa.gov/dced/weatherization> prior to making purchase to confirm if items are available for transfer from other agencies. If transfer is possible, contact your agency's weatherization monitor for further instruction.

Budgeted equipment or services with an acquisition cost of \$150,000 or higher must follow the Simplified Acquisition Procedures found in the appropriate OMB Circular or regulations specific to the funding source. OMB Circulars can be found at <http://www.whitehouse.gov/omb/grants/circulars>.

There must be a cost price analysis in connection with every procurement.

Subgrantees are to encourage participation from minority firms, women's business enterprises, and labor surplus area firms.

Bidding Requirements

Bidding requirements are addressed in subgrantee Master Agreement as follows:

“If the Grantee is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the Grantee shall comply with those procedures if they are applicable to the project being funded with the grant funds. Otherwise, the Grantee shall comply with open and competitive bidding procedures in awarding any and all grants, subgrants, contracts, subcontracts or other agreements in

excess of \$10,000.00 for construction, reconstruction, demolition, alteration and/or repair, for acquisition of machinery and equipment, or for engagement of the services of a professional consultant, when said grants, subgrants, contracts, subcontracts or other agreements are funded in whole or at least 50% in part with funds made available under this Contract. Open and competitive bidding procedures require the Grantee to obtain a minimum of three arm's length bids from vendors capable of providing the goods and/or performing the services requested. Arm's length transactions occur when the parties to the transaction are not related to one another and each party is acting in its own self-interest. The Grantor may require the Grantee to submit proof of compliance with said procedures, and failure to provide such proof to the satisfaction of the Grantor may result in termination of the Contract and repayment of all or a portion of the funds available under this Contract. Upon written request and for good cause shown, the Grantor may, at the Grantor's sole discretion, permit the Grantee to use an alternative procedure for solicitation of bids not inconsistent with law."

Code of Conduct

As also addressed in the subgrantee contract, all subgrantees shall maintain a written code of standards of conduct governing the performance of their employees, officers and others engaged in the award and administration of contracts. No employee, officer or agent of a subgrantee shall participate in the selection, award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or an organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The subgrantee's officers, employees and agents shall neither solicit nor accept gratuities, favors or anything of monetary value from suppliers or subcontractors or potential suppliers and subcontractors. To the extent permitted by state or local laws or regulations, such standards of conduct will provide for penalties, sanctions or other disciplinary actions for violations of such standards by the subgrantee's officers, employees or agents.

Procurement Standards

Subgrantees shall make awards only to responsible suppliers and subcontractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Please refer to subgrantee contract for more details on contractor integrity provisions which should help guide each subgrantee's policies. Subgrantees shall maintain records sufficient to detail the significant history of a purchase. These records shall include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, justification for lack of competition when competitive bids or offers are not obtained and the basis for the contract price. Such records shall be made available to CCS, DOE, DHS or HHS upon request.

Awards shall be made to the bidder/offeror whose bid or offer is responsive to the solicitation and is most advantageous to the subgrantee, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the subgrantee. Any and all bids or offers may be rejected and rebid if necessary when bids are deemed to be unacceptable due to price, delivery timeframe, quality or other such factors.

All procurement transactions shall be conducted in a manner providing for full and open competition. Full and open procurement procedures require that, based on the procurement method, advertisements be placed in local newspapers, or that documented telephone or written price quotes are obtained before purchase of goods or services is completed. Advertisement about the intent to purchase goods or procure services on an as needed basis is acceptable; however, additional solicitation may be required if procurement is outside the scope of any completed advertisements. Purchases through COSTARS satisfy the requirement for full and open competition without the necessity of the subgrantee securing other bids.

When conducting a procurement transaction, situations that may restrict free and open competition should be avoided. Some of the situations considered to be restrictive of competition include but are not limited to the following:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- requiring unnecessary experience and excessive bonding;
- noncompetitive pricing practices between firms or between affiliated companies;
- noncompetitive awards to consultants that are on retainer contracts;
- organizational conflicts of interest;
- specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
- any arbitrary action in the procurement process.

Subgrantees shall have written procedures for all procurement transactions. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the good or service to be procured. Such descriptions shall not, in competitive procurements, contain features that unduly restrict competition. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar criteria, together with discounts. According to federal cost principles, cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

Contracts in excess of the small purchase threshold (over \$25,000) shall contain contractual provisions or conditions that allow for administrative, contractual or legal remedies in instances in which a supplier or contractor violates or breaches the contract terms, and shall provide for such remedial actions as may be appropriate.

Types of Procurement

Regardless of the procurement method selected, all procurement of any single item with a cost of \$5,000 or more requires pre-approval. The approval process begins with a written request from the subgrantee to DCED describing the product, cost, and intended use. Please follow the steps outlined in the Management of Weatherization Property Directive. After departmental review, CCS will forward requests respectively to DOE or HHS for approval. Subgrantees should allow sufficient time for this review and approval process.

(A) Procurements from DGS COSTARS.

COSTARS, a cooperative purchasing program managed by DGS, will serve as the starting point for all procurements. The use of the COSTARS contract will eliminate significant administrative burden, in that suppliers who are included on the COSTARS contract have already agreed to abide by the existing federal procurement requirements. Purchases through COSTARS also satisfy the requirement for full and open competition without the necessity of securing bids. Subgrantees are encouraged to negotiate with suppliers on COSTARS on price and delivery terms, but ultimately are encouraged to make a best value determination. Where it is not cost-effective, feasible or expedient to purchase from COSTARS, subgrantees may purchase off contract, but will be required to comply with statutory procurement requirements: Commonwealth Procurement Code for state agencies, public procurement requirements for local governmental entities. In instances when goods and services are procured outside of COSTARS, the subgrantee shall be responsible for compliance with all statutes, rules and regulations applicable to public contracting and the expenditure of federal funds.

To purchase from COSTARS, subgrantees must apply for membership, which must be approved by DGS. Entities that do not qualify for COSTARS membership may be authorized by DGS to procure from COSTARS, but only when expending public funds.

(B) Individual/Non-COSTARS Procurement

Complete a competitive three-bid process. All subgrantees are required to obtain at least three arm's-length bids.

- (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing goods or services that do not cost more than \$25,000 over the term of the contract. If small purchase procedures are used, price or rate quotations shall be obtained and documented from a minimum of three qualified sources. At a minimum, documentation must include the name of bidder/offeror, description of the goods or services, date of solicitation, quantity, and per unit and aggregate cost. Subgrantees and subcontractors shall not divide single larger procurements into multiple smaller procurements in order to qualify those as small purchase procurements.
- (2) Procurement by sealed bids (formal advertising) for goods or services over \$25,000 over the term of the contract. Bids shall be publicly solicited and a firm fixed-price contract (lump sum or unit price) shall be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids (including quality and delivery terms), is the lowest in price. In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description.
 - Two or more responsible bidders are willing and able to compete effectively for the business.
 - The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements shall apply:

- The invitation for bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time for response prior to the date set for opening the bids.
- The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.
- All bids shall be publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed-price contract award shall be made in writing to the lowest responsive and responsible bidder. Where specified in the bid documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may be used to determine the low bid only when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound documented reason.

(3) **Procurement by competitive proposals** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract may be awarded. It is generally used when conditions are not appropriate for the use of sealed bids, as may be the case when ongoing or multiple awards are necessary. If this method is used, the following requirements apply:

- Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
- Proposals will be solicited from an adequate number of qualified sources.
- Subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.
- Awards will be made to the responsible firm(s) whose proposal is most advantageous to the program, with price and other factors considered. Such records shall be maintained and made available to DCED or DOE upon request.

The type of procurement used shall be determined by the subgrantee but shall be appropriate for the particular procurement and for promoting the best interest of CSBG and WAP and the project involved. If the subgrantee has doubt on which procedure should apply, it should consult with CCS or DGS. The “cost plus percentage of cost” or “percentage of construction cost” methods of contracting shall not be used.

For the CSBG Program Property Management:

- CCS requires a waiver to purchase, construct, or improve real property in whole or in part with CSBG funds.

Subcontracting Procedures

Subcontracting for services is subject to all appropriate procurement policies identified in this Directive and all applicable federal policies. Since procurement by sealed bids (formal advertising) may not always be appropriate due to the need to procure these services on an on-

going and timely basis, and when more than one qualified contractor is necessary to meet the production needs of the subgrantee, procurement by competitive proposals is also an allowable means to secure these services.

Subcontracts must clearly state the appropriate program policy and federal and state statutes, regulations, rules and directives, as well as the rights and obligations of each party.

After determining what items or services are to be subcontracted, the subgrantee must develop a list of specifications for the items/services to be procured along with some form of cost or price analysis using historical data, commercial pricing and sales information sufficient to enable the agency to verify the reasonableness of the price as a catalog or market price of a commercial product.

A Request for Proposal (RFP) must be developed to include the scope of work, job specifications with an itemized price list, necessary contractor requirements, qualifications and agency expectations. Notice of the RFP's availability should be placed in all appropriate newspapers and also be provided directly to companies that the subgrantee has researched and has reason to believe possess the qualifications to meet the needs of the program.

The subgrantee must develop written rating standards to be used to certify a subcontractor as eligible to participate in the program. This rating system must provide for a consistent and objective evaluation of the potential subcontractors. Subgrantees shall engage only subcontractors who have a satisfactory safety and quality record, and maintenance of a satisfactory safety record and quality workmanship shall be conditions to continuation of any subcontract. Conversely, an unsatisfactory safety record (as judged against other bidders or potential bidders), or unsatisfactory workmanship or the use of inferior or non-specified materials, shall be grounds for early termination of any subcontract.

Upon review and determination of eligibility, written notification should be sent to all bidding subcontractors indicating their acceptance or rejection to the RFP. The number of subcontractor(s) determined eligible shall be based on their overall rating. In addition, the subgrantee's needs and adequate coverage for the service area should be considered when selecting the number of eligible subcontractors. The subgrantee may, at its discretion and depending on the reason for rejection, afford the subcontractors an opportunity to revise their proposal to meet the requirements of the RFP. A notice of rejection should include a protest/appeal procedure with a cutoff date for those subcontractors not meeting the eligibility criteria.

Notice of acceptance to qualifying subcontractors should indicate a date and time of an initial subcontractors meeting, which should include, where appropriate, but is not necessarily limited to, review of:

- program description;
- anticipated amount of work that may be afforded to the subcontractors;
- content and requirements of the subcontract agreement including all state and federal flow down provisions;
- Federal flow down provisions can be found at Appendix II of 2 CFR Part 200
- obligations of the agency and the subcontractor;
- scope of work/job specifications and technical requirements of the program;
- For WAP to include, but not limited to work scheduling, issuance of work orders, provisions for issuing and documenting change orders; clearance testing, quality control inspection requirements, callback procedures and final signoff; and invoicing and payment procedures.

At this time, or at a subsequent meeting, the price lists submitted by subcontractors for the items identified in the RFP will be reviewed and compared to the agency's cost analysis. The price list will be reviewed and negotiated as necessary to arrive at a fixed price for services to be provided by the subcontractors.

Once subcontractors have agreed to the terms and conditions set forth by the subgrantee, a subcontract shall be executed. The subcontractors should also be provided with any additional procedural or technical information, any required forms that may be necessary to fulfill the terms of the subcontract, and appropriate guides and instructions..

If, after a subgrantee has fulfilled all the requirements of a competitive bid process, either through sealed bids (formal advertising) or competitive proposal/negotiation, and there is insufficient competition (i.e., no or only one bidder), the subgrantee, may proceed to secure services through noncompetitive procurement. In this case it is required that a cost analysis be conducted to determine the reasonableness of compensation requested by a subcontractor.

Noncompetitive procurement may only be used when it is not feasible for:

- Small purchase procedures
- Sealed bid or competitive proposals

And one of the following conditions applies:

- Item only available from a single source
- An emergency exists that will not permit a delay resulting from competitive bidding.

Noncompetitive procurement or sole source procurement, other than small purchases (less than \$25,000 over the life of the contract), must have the prior approval of DCED.

Sub-grantee is required to confirm that their sub-contractors are not on a Federal or State Debarment or Suspension List.

The WAP program, should be given to each subcontractor performing weatherization services. Any subcontractor that receives training through the WAP, agencies are encouraged to develop and implement some kind of retention agreement that would require the subcontractor to work in the WAP for a specific amount of time and align with the cost of the training provided. Examples of contractor/agency retention agreements can be found on www.waptac.org.

Subcontracting for LIHEAP Crisis Services

To maintain the greatest consistency with the WAP guidelines, subcontractors under existing subcontracts with the subgrantee shall be utilized to provide crisis services. However, due to the increased demand and emergency requirements (48-hour mandated response time) of the crisis program, it may be necessary to secure services from subcontractors not normally utilized and under a subcontract with the subgrantee. In this case, subgrantees are authorized to procure services from subcontractors on a temporary basis without entering into a formal subcontract provided that their qualifications have been reviewed and approved and a cost/price analysis is performed to determine the reasonableness of compensation requested by the subcontractor.

These temporary subcontractors must meet the lead safe work practice and OSHA requirements, carry proper licensing and/or certifications, carry appropriate and sufficient insurance and be able to provide all the required documentation for the work they perform.

It is also allowable to have the client request a subcontractor of their choice to provide crisis services (e.g., those who have a service contract or a current fuel vendor), provided the cost is reasonable and they meet the requirements for a temporary subcontractor. For bids received in this manner, if after review, and in the subgrantee's experience, the amount is questionable, an additional bid must be secured and documented prior to approval. All crisis heating system installations performed by a subcontractor that is not normally affiliated with the WAP must be inspected prior to payment.

4.0 Notations

This directive shall supersede and replace in entirety the following directives:

- *Directive CW2014-01, Procurement, Bidding, and Subcontracting Procedures*

5.0 Effective Date

This directive shall take effect July 1, 2016 and shall remain in effect, in its entirety, until such time as it is amended, replaced, superseded, or nullified. Only a directive from the Center for Community Services or equivalent office may countermand any statement herein contained.

Cc: Center for Community Services
Financial Management Center